

Government

# Public Being Shortchanged by R.I. Supreme Court's Four-Decade-Old Shoreline Access Decision

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New research from the University of Rhode Island finds public access to the coast is limited by a state Supreme Court decision made nearly 40 years ago. (Frank Carini/ecoRI News)

By ROB SMITH/ecoRI News staff

Rhode Island attorneys and property owners may have to accept the idea of a dynamic and constantly



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changing shoreline boundary. The state's 12-member House commission to study shoreline access issues recently heard from a group of experts about the legal and scientific difficulties of finding a fixed, permanent boundary on the state's ocean-facing properties.

It is an [annual problem](#) as sure as the ebb and flow of tides. The [Rhode Island Constitution](#) enshrines access to “the privileges of the shore.” But where do those privileges end, and where does trespassing on private property begin? Property owners have always argued against letting the public onto beaches they claim to own, claiming it constitutes an illegal seizing of their property. Shoreline activists say this conflicts with their constitutional rights to the shore.

The problem comes down to where the line is drawn in the sand. A 1982 Rhode Island Supreme Court decision, [State v. Ibbison](#), set the line at the high-water mark or the mean high tide line (MHW), defined as the average of 18.6 years of data derived from tidal gauges. But the MHW line is either underwater or not identifiable by the casual beachgoer.

“What can be seen is the last high tide swash, the extent that the beach got wet at the last high tide at any given day,” Nathan Vinhateiro, assistant director at University of Rhode Island's Coastal Institute, said during an Oct. 14 online meeting of the House commission.

URI has collected data on Rhode Island's beaches since 1962, generating beach profiles from Napatree Point in Westerly to Point Judith in Narragansett.

Student researchers go out and survey the state's beaches every two weeks—in June, July, and August the surveys are only performed once a month—taking note of the last high tide swash line (LHTS) over time.

“The last high tide swash line is always landward of the mean high tide line,” Vinhateiro said.

The URI data showed on average that the LHTS was 40-60 feet landward compared to the mean high tide line. The MHW and the private boundary is actually a lot more seaward than most people think.

MHW is tough to measure, typically requiring sophisticated scientific equipment. But the line is always changing, “basically with each wave.” The tidal data sets issued by the National Oceanic and Atmospheric Administration every 18.6 years do not account for the normal processes on the beach: sand accretion; the movement of sand; erosion; damage from intense storms and hurricanes.

This summer, URI researchers investigated the MHW, monitoring every month on specific days how long the public can reasonably access the shore without trespassing. Using real-time kinematic global positioning system (GPS) instruments, they would locate the MHW on the spot, stake the location, and take notes on water levels as the tide flowed in and out.

Their findings show there is only a 30-minute period during a tide cycle where there is a walkable beach 6 feet wide, the minimum amount of space needed for two people to walk side by side. The data shows the

MHW is only available two hours before low tide and two hours after low tide.

“What we’re finding more often than not, if you are on the beach and your feet aren’t wet, you are above that Ibbison line,” Vinhateiro said.

The [special commission](#) also heard from one of its own members. Dennis Nixon, a legal expert in shoreline access and retired URI professor, presented a legal and constitutional history of shoreline access in Rhode Island. He said the constitutional right to shoreline access is illusory unless the state decriminalizes trespassing on the shoreline or sets the legal property boundary higher at the last high tide swash line.

“When you choose to live at the water’s edge, you choose to live next to the public’s submerged land that moves,” Nixon said.

He disputed the traditional legal arguments from property owners, that letting the public on the shore would damage property, depress values, or constitute the government seizing property. He compared the right to shoreline access to a city sidewalk. People are allowed to pass along the sidewalk but not host parties or play loud music. A sidewalk is not a permanent extraction from property owners, Nixon said, it is a temporary usage and a public right of passage.

Existing state law already exempts waterfront property owners from legal liability. If a member of the public is not trespassing on the shore and they

injure themselves, the property owner cannot be sued for damages.

Some on the commission members questioned if opening the beach further to the public would provide certainty in the legal profession. Nixon said there already was deep uncertainty in property deeds and the law. Deeds for waterfront properties traditionally set the boundary at the body of water, but the shoreline is constantly changing, which means the property line is constantly changing.

“The law has to embrace a dynamic shoreline,” Nixon said.

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